

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Zagel	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 3006	DATE	12/13/2004
CASE TITLE	CATUARA vs. WASHINGTON MUTUAL		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Motion (3-1) to dismiss appeal is denied. Own its own motion, this Court directs Appellant Catuara to show cause why the appeal should not be dismissed as clearly frivolous. Appellant to show cause by filing a brief pursuant to this opinion on or by 1-5-05. Ruling to be made by mail. Enter memorandum opinion and order.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.	<div style="text-align: center;">               Date/time received in central Clerk's Office           </div>	number of notices	<div style="text-align: center;"> <b>850742998</b>              date docketed              docketing deputy initials              date mailed notice              mailing deputy initials           </div>	Document Number
<input type="checkbox"/> No notices required.				
<input type="checkbox"/> Notices mailed by judge's staff.				
<input type="checkbox"/> Notified counsel by telephone.				
<input checked="" type="checkbox"/> Docketing to mail notices.				
<input type="checkbox"/> Mail AO 450 form.				
<input type="checkbox"/> Copy to judge/magistrate judge.				
DW	courtroom deputy's initials			

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In Re: CHAD F. CATUARA,

Appellant,

v.

WASHINGTON MUTUAL,

Appellee.

**DOCKETED**

DEC 14 2004

No. 04 C 3006  
Judge James B. Zagel

**DEC 14 2004**

**MEMORANDUM OPINION AND ORDER**

I have before me a motion to dismiss this appeal for late filing of the notice of appeal.

The response of the pro se Appellant is itself late, and he asks for leave to file it instant.

The Appellant is right on the question of timely appeal. The order from which he appealed was made in his presence and signed the day it was made. The Appellant filed his notice of appeal too late if the order date started the clock ticking. But, the rule starts the clock when the order is entered, which was one day after it was signed, making Appellant's notice of appeal timely.

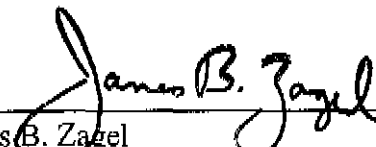
A more fundamental problem is that the appeal appears to be frivolous. What is appealed from is a second denial of an attempt to reverse an order lifting of the automatic stay. The stay was lifted to allow a mortgage foreclosure to proceed. Appellant has included the transcript of the argument made before Judge Wedoff whose ruling is challenged here. The only argument Appellant has made is that he wanted to convert his Chapter 7 proceeding into a Chapter 11 or 13 proceeding. Had he done so, the trustee would be selling the house instead of the Sheriff or the Special Commissioner. But, as Judge Wedoff pointed out, Appellant had not converted his Chapter 7 when the first Bankruptcy Judge denied his stay. The motion before Judge Wedoff

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out to be as frivolous as it appears, I shall consider whether I ought to impose sanctions against Appellant.

The Appellee's Motion to Dismiss the appeal as untimely is DENIED. On its own motion, this Court directs Appellant to show cause why the appeal should not be dismissed as clearly frivolous.

ENTER:

  
\_\_\_\_\_  
James B. Zagel  
United States District Judge

DATE: DEC 13 2004